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August 24, 2005

Via Overnight Courier

Sharla Dillon, Docket Room Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket No. 05-00230 – Response to Data Request No. 1
Joint Application of Manhattan Telecommunications Corporation d/b/a
Metropolitan Telecommunications and Business Productivity Solutions,
Inc. for Authority Necessary to Complete Transfer of Control

Dear Ms. Dillon:

On behalf of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications ("MetTel") and Business Productivity Solutions, Inc. ("BPS") (collectively, "Applicants"), transmitted herewith is an original plus thirteen (13) copies of their response to the Tennessee Regulatory Authority's ("Authority") Data Request No. 1, dated August 23, 2005. Following are Applicants' responses.

- 1. Have the Applicants filed similar petitions or notices in other states? If so, provide a listing of states and action taken.**

Applicants have filed similar petitions or notices in the 48 contiguous United States and Hawaii. Applicants have determined that formal Utility Commission Approvals are required for this transaction for the following states: California, Colorado, Delaware, Georgia, Hawaii, Louisiana, Minnesota, New Hampshire, New York, Ohio, Pennsylvania, Tennessee, Vermont, West Virginia and Wyoming. All formal Approval Applications have been docketed and are currently pending before the respective Commissions.

In all other states, Applicants provided courtesy notices or made other filings necessary to update Utility Commission records to reflect the proposed new corporate ownership and structure.

2. **Have the Applicants filed a similar petition with the FCC or other federal agency? If so, list any action taken and the associated file(s) or document number(s). If a schedule to complete the review of your petition has been established by any federal agency, provide such with your response.**

Section 214 Applications have been filed with the FCC requesting Section 214 Authorization to consummate the proposed transfer control.

On August 23, 2005, the FCC accepted Applicants' Section 214 Application for Authority to Transfer Control for streamlined processing. See Public Notice, WC Docket 05-262, attached hereto as Exhibit A. As denoted in the Public Notice, the FCC recognizes the proposed transaction as a transparent Transfer of Control and not a Transfer of Customer Base or Assets.

Comments on Applicants' FCC 214 Application are due September 6, 2005 with Reply Comments due September 13, 2005. If Applicants' FCC 214 Application remains on streamlined processing, it shall be automatically granted and effective on September 24, 2005.

3. **Provide the number of customers that BPS currently has in Tennessee.**

BPS currently has 206 customers in the State of Tennessee.

4. **Will all BPS customers in Tennessee be transferred to MetTel?**

None of BPS' customers will be transferred directly to MetTel, but instead will continue to be served through the BPS entity under MetTel's control. In other words, following consummation of the transaction BPS will continue to operate as it does today, but its direct owner will be MetTel, as opposed to Eschelon Operating Company, and its indirect ultimate owner will be Metropolitan Telecommunications Holding Company, instead of Eschelon Telecom, Inc.

The proposed transaction will be completed at the holding company level and will not result in any transfer or assignment of BPS' operating authority or customers. Upon consummation of the transaction, BPS will continue to provide services to customers under its existing name and BPS' customers will continue to receive end user service under the same rates, terms and conditions that currently apply. The transfer of control will be entirely transparent to BPS customers and will not have any adverse impact upon them. The only change will be in the direct and ultimate ownership of BPS. See e.g., Exhibit A.

5. **What telecommunications services will BPS continue to provide under its current CCN in Tennessee after the transfer?**

BPS will continue to provide all services under its current operating authority after consummation of the transaction.

6. Consistent with TRA Rule 1220-4-2-.56(2)(d), provide a current customer notice or letter informing customers of the change in ownership and/or operating authority.

TRA Rule 1220-4-2- 56(2)(d) requires the following:

- 1 A notification letter, pre-approved by the Authority, shall be sent by the current provider of telecommunications service to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter unless the customer selects another telecommunications service provider. The notification letter shall be mailed by U S First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer.
- 2 The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2- 56(2)(d)(2) shall inform the customer of this provision.
- 3 The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4- 2- 56(2)(d)(2) shall inform the customer of this provision.

Applicants have reviewed TRA Rule 1220-4-2- 56(2)(d) and believe it applies to Customer Base Transfers, but does not apply to Transfers of Control which occur at the holding company level and which are transparent to customers. Therefore, Applicants do not believe TRA Rule 1220-4-2- 56(2)(d) is applicable to their proposed transaction.

As explained in their Application and restated in Response to Question 4, above, current BPS customers will not be "transferred" to MetTel; only direct and ultimate control of BPS will be transferred, but said transfer will not affect the operating entity or how it conducts business in Tennessee or interfaces with Tennessee customers. The conclusion that "transfer of control" will occur and not a "transfer of assets" is evidenced by the fact that existing BPS customers will not incur any Preferred Carrier change charges as a result of the transaction because there will be no change in Preferred Carrier; BPS will remain the PC'd carrier of all current BPS customers. Lastly, all rates, terms and conditions of service will remain unchanged following the proposed transaction. In sum, current BPS customers will remain BPS customers – they will experience no perceivable change as a result of the transaction. The only change will be in direct and ultimate ownership and the increased focus on providing excellent service and expansion of service offerings these new owners will bring to BPS customers.

If the TRA disagrees with Applicant's interpretation of the applicability of TRA Rule 1220-4-2- 56(2)(d) to their proposed transaction, the Applicant's respectfully request the TRA to waive the requirements of TRA Rule 1220-4-2- 56(2)(d) for good cause shown and to ensure consistent treatment of the proposed transaction with the FCC and other states.

7. **Verify all current CCNs issued by the Authority, and provide copies of all current business licenses of MetTel and BPS filed with the Tennessee Secretary of State's Office.**

See Exhibit B.

MetTel, *i.e.*, Manhattan Telecommunications Corporation, d/b/a Metropolitan Telecommunications, the Applicant in the above-captioned Docket, does not possess a CCN or business license in the state of Tennessee, nor is it required to.

One of MetTel's many subsidiaries, however, Metropolitan Telecommunications of Tennessee, Inc., is licensed by the Secretary of State of Tennessee as a domestic corporation. Metropolitan Telecommunications of Tennessee, Inc. does not currently possess a CCN, but intends to file an Application for CCN to provide local exchange and interexchange services in Tennessee in the near future.

BPS possesses both a business license to transact business in Tennessee as a foreign corporation and a CCN to provide local exchange services. BPS' CCN was granted by the TRA by Order approving the Transfer of Authority of the CCN of GE Business Productivity Solutions, Inc. to BPS.

8. **Confirm that Applicants will continue to operate under their present CCNs issued by the Authority and business licenses as filed with the Tennessee Secretary of State's Office.**

Applicants will continue to operate under their present CCNs issued by the Authority and business licenses as issued by the Tennessee Secretary of State.

9. **Per page 2 of the Petition filed with the Authority on August 12, 2005, "MetTel currently has an application pending before the Authority for a Certificate of Authority to provide local and long distance communications services in the State of Tennessee." Our internal investigation has revealed that no such application has been received by the Authority. Explain the discrepancy.**

The reference on Page 2 of the Application is an incorrect scrivener's error. Neither MetTel nor any of its subsidiaries currently have an Application for CCN pending before the TRA. MetTel's wholly-owned subsidiary, Metropolitan Telecommunications of Tennessee, Inc., however, intends to file an Application for CCN to provide both local exchange and interexchange services in the near future.

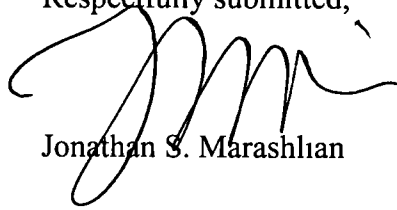
10. **Per the Petition filed with the Authority on August 12, 2005, file the Purchase Agreement the Applicants entered into on August 10, 2005, by and between MetTel, BPS, and BPS' direct parent, Eschelon Operating Company.**

See Exhibit C (filed under seal, pursuant to request for confidential treatment filed with the August 11, 2005 Joint Application).

An additional copy of this response is enclosed herewith, to be date-stamped and returned in the postage prepaid envelope provided.

Should there be any questions regarding this matter, kindly contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Marashlian', written over the printed name.

Jonathan S. Marashlian

EXHIBIT A

FCC Public Notice – WC Docket No. 05-262



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet [http //www fcc gov](http://www.fcc.gov)
<ftp.fcc.gov>

DA 05-2347

Released: August 23, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL
OF BUSINESS PRODUCTIVITY SOLUTIONS, INC., TO MANHATTAN
TELECOMMUNICATION CORPORATION D/B/A METROPOLITAN
TELECOMMUNICATIONS**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-262

Comments Due: September 6, 2005

Reply Comments Due: September 13, 2005

On August 11, 2005, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications ("MetTel") and Business Productivity Solutions, Inc ("BPS"), (collectively "Applicants"), filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requesting approval to transfer control of BPS to MetTel. MetTel and BPS are non-dominant carriers authorized by the Commission to provide international and domestic telecommunications services.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because (a) after the proposed transaction, MetTel and its affiliates will have less than 10 percent market share in the interstate, interexchange marketplace and will provide competitive services exclusively in areas served by dominant local carriers that are not parties to the proposed transaction, and (b) the Applicants are not currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction³

¹ 47 C F R §§ 63.03, 63.04, *see* 47 U S C § 214

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications

³ 47 C F R § 63.03(b)(2)(i)

MetTel is a privately-held corporation organized under the laws of the state of Delaware. Either directly or through its wholly owned operating subsidiaries,⁴ MetTel presently provides local exchange, domestic interexchange (both interLATA and intraLATA), international and advanced data and Internet services to customers residing in: California, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, and West Virginia. MetTel is a direct, wholly owned subsidiary of Metropolitan Telecommunications Holding Company ("MTHC"), also a Delaware corporation. The following individuals or entities hold a 10% or greater direct ownership interest in MTHC: Marshall Aronow, a U.S. citizen, 28%; David Aronow, a U.S. citizen, 27%, Joseph Aronow Trust U/A 4/13/99, a U.S. Trust, 13.5%, Deborah Aronow Trust U/A 4/13/99, a U.S. Trust, 13.5%. No other person or entity holds a 10% or greater direct or indirect ownership interest in MTHC.

BPS is a privately-held corporation organized under the laws of the state of Minnesota. BPS provides resold intrastate and interstate telecommunications throughout the contiguous United States and the District of Columbia. Additionally, BPS is authorized to provide local exchange services in Connecticut, Delaware, Hawaii, Kansas, Missouri, Massachusetts, North Dakota, Oregon, Tennessee and Wisconsin. BPS is a direct, wholly owned subsidiary of Eschelon Operating Company ("OPCO"), a Minnesota corporation that functions as a holding company, which in turn is a direct, wholly owned subsidiary of Eschelon Telecom, Inc. ("ETI"), a Delaware corporation, and the ultimate parent corporation. ETI is authorized to provide telecommunications services in California, Idaho, New Mexico and New York, however, ETI only provides service, specifically long distance resale service, to 1 business customer in New York. OPCO has several direct, wholly owned subsidiaries that offer telecommunications services in various states.⁵ In these states, the subsidiaries provide resold and facilities-based local, resold long distance, Internet and data services to small and medium sized businesses. ETI's BPS subsidiary also provides long distance services to residential customers. ETI and its

⁴ In New York, MetTel provides services directly through Manhattan Telecommunications Corporation. In other states, MetTel provides services through its wholly owned subsidiaries, Metropolitan Telecommunications of California, Inc., Metropolitan Telecommunications of CT, Inc., Metropolitan Telecommunications of D.C., Inc., Metropolitan Telecommunications of DE, Inc., Metropolitan Telecommunications of Florida, Inc., Metropolitan Telecommunications of Georgia, Inc., Metropolitan Telecommunications of Illinois, Inc., Metropolitan Telecommunications of Maine, Inc., Metropolitan Telecommunications of Maryland, Inc., Metropolitan Telecommunications of Mass., Inc., Metropolitan Telecommunications of Michigan, Inc., Metropolitan Telecommunications of New Hampshire, Inc., Manhattan Telecommunications Corporation of New Jersey, Inc., Metropolitan Telecommunications of North Carolina, Inc., Metropolitan Telecommunications of Ohio, Inc., Metropolitan Telecommunications of PA, Inc., Metropolitan Telecommunications of Rhode Island, Inc., Metropolitan Telecommunications of South Carolina, Inc., Metropolitan Telecommunications of Texas, Inc., Metropolitan Telecommunications of Vermont, Inc., MetTel of VA, Inc. and Metropolitan Telecommunications of West Virginia, Inc.

⁵ Advanced TelCom, Inc., Eschelon Telecom of Minnesota, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Colorado, Inc., Eschelon Telecom of Nevada, Inc., Eschelon Telecom of Arizona, Inc., Eschelon Telecom of Utah, Inc. and Eschelon Telecom of Oregon, Inc.

subsidiaries, collectively “Eschelon,” provide voice, data, Internet services and business telephone systems to over – 50,000 customers, and have over 387,000 access lines in service. Eschelon owns switches in all states where it offers local services. Eschelon provides local and long distance facilities-based service in 19 markets in 8 states.⁶ There are no other affiliates of BPS that offer domestic telecommunications services.

On October 7, 2004, BPS was created to facilitate ETI’s acquisition of certain assets purchased from GE Business Productivity Solutions, Inc (“GEBPS”). The details of this transaction, which was approved by the Commission on December 20, 2004,⁷ are set forth in the Commission’s records pertaining to BPS’s Section 214 application for Commission approval of its acquisition of assets from GE Business Productivity Solutions, Inc.⁸ Pursuant to the terms of a Stock Purchase Agreement (“Agreement”), dated August 9, 2005, by and between MetTel, OPCO and BPS, MetTel will acquire 100% of the issued and outstanding capital stock of BPS, which is currently held by BPS’s immediate parent, OPCO (the “Transaction”). Following completion of the proposed Transaction, BPS will be a direct, wholly owned subsidiary of MetTel.

The Applicants submit that the proposed Transaction serves the public interest. In particular, Applicants indicate that the proposed Transaction will be entirely transparent to customers of BPS. Immediately after consummating the proposed Transaction, MetTel will continue to provide the identical end user telecommunications and other services to the affected customers and will continue to provide these services at the rates and pursuant to the terms and conditions of service these customers currently receive from BPS. Further, MetTel will continue to provide service under the BPS name.

The Applicants expect that the proposed Transaction will increase competition in the telecommunications market by strengthening MetTel’s position as an effective and multifaceted telecommunications carrier. The Applicants state the Transaction will allow MetTel to combine its financial, technical and market resources and expertise with that of BPS, thereby enhancing its ability to provide reliable, competitively priced services to customers.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return

⁶ ETI and its operating subsidiaries, not including BPS, are not involved in the instant transaction. They will continue to hold their telecommunications authorizations and serve their existing customers as they have in the past.

⁷ See Public Notice, DA 04-3998, Notice of Streamlined Domestic 214 Applications Granted, WC Docket No. 04-413 (rel. Dec. 21, 2004).

⁸ See Domestic Section 214 Application filed for Acquisition of Assets of GE Business Productivity Solutions, Inc., by Business Productivity Solutions, Inc., WC Docket No. 04-413.

any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before September 6, 2005** and **reply comments on or before September 13, 2005**.⁹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.¹⁰ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS. <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form". A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal

⁹ See 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U S Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty)

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ccfs/> Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone 202-418-0530 or TTY: 202-418-0432

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc , 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com, phone: (202) 488-5300 fax: (202) 488-5563,
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W , Room 5-C212, Washington, D C. 20554, email: tracey.wilson-parker@fcc.gov,
- (3) Renée R Crittendon, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W , Room 5-C311, Washington, D C 20554; e-mail rencc.crittendon@fcc.gov,
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S W , Room 7-B544, Washington, D C 20554; email: susan.o'connell@fcc.gov, and
- (5) James Bird, Office of General Counsel, 445 12th Street, S W , Room 8-C824, Washington, D C 20554, e-mail: james.bird@fcc.gov

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554 They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or
Renée R. Crittendon at (202) 418-2352

- FCC -

EXHIBIT B

Applicant's CCN and Business License

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE

April 11, 2005

IN RE:

JOINT APPLICATION OF GE BUSINESS PRODUCTIVITY)
SOLUTIONS, INC. AND BUSINESS PRODUCTIVITY)
SOLUTIONS, INC. FOR EXPEDITED APPROVAL OF)
(I) THE TRANSFER OF ASSETS, INCLUDING THE)
CUSTOMER BASE, OF GE BUSINESS PRODUCTIVITY)
SOLUTIONS, INC. TO BUSINESS PRODUCTIVITY)
SOLUTIONS, INC. ; (II) THE TRANSFER OF GE)
BUSINESS PRODUCTIVITY SOLUTIONS, INC.'S)
OPERATING AUTHORITY IN TENNESSEE TO BUSINESS)
PRODUCTIVITY SOLUTIONS, INC. ; AND (III) GE)
BUSINESS PRODUCTIVITY SOLUTIONS, INC.'S)
DISCONTINUANCE OF SERVICE IN TENNESSEE)

DOCKET NO.
04-00370

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on December 13, 2004 for consideration of the *Application and Request for Expedited Treatment* ("Application") filed jointly by GE Business Productivity Solutions, Inc. ("GEBPS") and Business Productivity Solutions, Inc. ("BPS") (together the "Parties"). The Parties sought TRA approval, pursuant to the provisions of Tenn. Code Ann. § 65-4-113 (2004) and the Rules of the TRA, for the transfer of authority to provide telecommunications services.

Statutory and Regulatory Framework

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services (also known as a "certificate of public convenience

and necessity" or "CCN"). Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer.

Further, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Background

By an Order dated October 13, 1995 in TRA Docket No. 95-03180, GEBPS, whose ultimate parent company is General Electric Company, received its CCN to provide resold long distance service in Tennessee. GEBPS later received authority to provide resold local exchange services on October 15, 1996 in Docket No. 96-01430.

BPS is a newly formed Minnesota company, and it currently is not authorized to provide telecommunications services in Tennessee. BPS is a wholly owned subsidiary of Eschelon Operating Company ("OPCO") and OPCO is a wholly owned subsidiary of Eschelon Telecom, Inc. (together with its subsidiaries "ETI"), which, along with its subsidiaries, provides local and long distance facilities-based service in seven states and has 38,000 customers.

The Application

In the *Application*, which was filed with the TRA on October 21, 2004, GEBPS and BPS jointly requested approval for a transfer of authority transaction. GEBPS plans to exit the telecommunications business in Tennessee as well as in other states it currently serves. In association with the proposed transaction, all of GEBPS's assets, as well as its CCN and customers, will be transferred to ETI. ETI will then immediately transfer the assets and customers to BPS. The Parties have also requested that GEBPS be allowed to discontinue service in Tennessee upon completion of the transaction and that GEBPS's tariff be adopted by BPS effective as of December 31, 2004.

According to the *Application*, this transaction will not adversely impact GEBPS customers, and they will not experience any loss or impairment of service. The Petitioners maintain that customers will continue to receive their existing services at the same rates, terms and conditions and any future changes in the rates, terms and conditions of service will be made consistent with TRA requirements. On October 28, 2004, the Parties sent GEBPS customers a notification letter.

informing the customers of the proposed transfer and outlining its expected impact on the customers' rates and service. The Parties attached the proposed letter as Exhibit C to the *Application*.

To support approval of the *Application*, the Parties assert that BPS has the managerial, technical, and financial resources to assume the obligations of GEBPS as a certificated telecommunications provider in Tennessee. According to the *Application*, ETI is a private company but due to recent debt issuance, it has public reporting responsibilities. According to recent filings with the U.S. Securities and Exchange Commission ("SEC"), ETI has access to the financing and capital necessary to conduct its telecommunications operations and to fulfill any obligations it may undertake with respect to the operations and maintenance of its services. In addition, ETI has an experienced management team with more than 100 years of combined telecommunications experience. The transaction will increase competition in the Tennessee telecommunications market because ETI has a strong family of companies, all of which are focused exclusively on telecommunications services.

December 13, 2004 Authority Conference

At the December 13, 2004 Authority Conference, the Directors voted unanimously to approve the *Application*. The Parties have complied with the requirements of Tenn. Code Ann. § 65-4-113 (2004) and the change will have no detrimental effect on the customers or public welfare. The Directors noted that the customer notification letter did not meet the requirements of Tenn. Comp. R. & Regs. 1220-4-2-56(2)(d) but was in substantial compliance with the rule. The Directors voted unanimously to waive the requirements of Tenn. Comp. R. & Regs. 1220-4-2-56(2)(d) and approve the letter as filed.

IT IS THEREFORE ORDERED THAT:

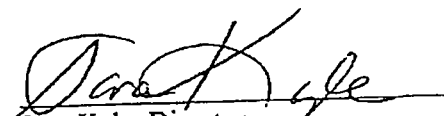
1. The *Application* of the Petitioners is approved.
2. The proposed transfer of authority as described in the *Application* and discussed

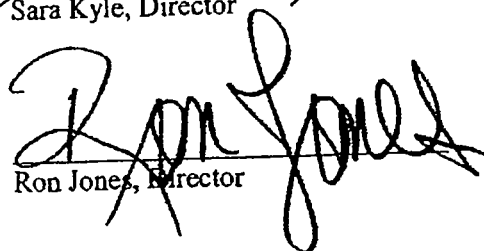
herein is approved, including the transfer of the CCN and customer base from GEBPS to BPS.

3. GE Business Productivity Solutions, Inc.'s tariff is adopted by Business Productivity Solutions, Inc effective as of December 31, 2004

5. The requirements of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) are waived and the customer notification letter is approved.


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

DATE: 10/28/04
REQUEST NUMBER: 5267-1024
TELEPHONE CONTACT: (615) 741-2286
FILE DATE/TIME: 10/27/04 1203
EFFECTIVE DATE/TIME: 10/27/04 1203
CONTROL NUMBER: 0480242

TO:
CSC
2711 CENTERVILLE RD.
STE 400
WILMINGTON, DE 19808

RE:
BUSINESS PRODUCTIVITY SOLUTIONS, INC.
APPLICATION FOR CERTIFICATE OF AUTHORITY -
FOR PROFIT

WELCOME TO THE STATE OF TENNESSEE. THE ATTACHED CERTIFICATE OF
AUTHORITY HAS BEEN FILED WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE
ON OR BEFORE THE FIRST DATE OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE
CORPORATION'S FISCAL YEAR. PLEASE PROVIDE THIS OFFICE WITH WRITTEN
NOTIFICATION OF THE CORPORATION'S FISCAL YEAR. THIS OFFICE WILL MAIL THE
REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE
ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS
OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED
AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE REVOCATION
OF ITS CERTIFICATE OF AUTHORITY.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

FOR: APPLICATION FOR CERTIFICATE OF AUTHORITY -
FOR PROFIT

ON DATE: 10/28/04

FROM:
CSC (2711 CENTERVILLE RD)
2711 CENTERVILLE RD.
SUITE 400
WILMINGTON, DE 19808-0000

RECEIVED: FEES \$600.00 \$0.00
TOTAL PAYMENT RECEIVED: \$600.00

RECEIPT NUMBER: 00003602576
ACCOUNT NUMBER: 00250881

Riley C Darnell

RILEY C DARNELL
SECRETARY OF STATE



State of Tennessee



Department of State
Corporate Filings
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

APPLICATION FOR
CERTIFICATE OF AUTHORITY
(FOR PROFIT)

RECEIVED
STATE For Office Use Only
2004 OCT 27 PM 12:03
FILED
RILEY J. DANIEL
SECRETARY OF STATE

Pursuant to the provisions of Section 48-25-103 of the Tennessee Business Corporation Act, the undersigned corporation hereby applies for a certificate of authority to transact business in the State of Tennessee, and for that purpose sets forth

1. The name of the corporation is Business Productivity Solutions, Inc

*If different, the name under which the certificate of authority is to be obtained is _____

[NOTES: The Secretary of State of the State of Tennessee may not issue a certificate of authority to a foreign corporation for profit if its name does not comply with the requirements of Section 48-14-101 of the Tennessee Business Corporation Act. *If obtaining a certificate of authority under a different corporate name, an application for registration of an assumed corporate name must be filed pursuant to Section 48-14-101(d) with an additional \$20.00 fee.]

2. The state or country under whose law it is incorporated is Minnesota

3. The date of its incorporation is October 07, 2004 (must be month, day, and year), and the period of duration, if other than perpetual, is _____

4. The complete street address (including zip code) of its principal office is c/o J Jeffery Oxley
730 Second Avenue South, Minneapolis, MN 55402

Street City State/Country Zip Code

5. The complete street address (including the county and the zip code) of its registered office in Tennessee and the name of its registered agent is

2908 Poston Avenue, Nashville, TN 37203
Street City State/Country Zip Code
Registered Agent Corporation Service Company

6. The names and complete business addresses (including zip code) of its current officers are (Attach separate sheet if necessary)
See attached officers/directors rider

7. The names and complete business addresses (including zip code) of its current board of directors are. (Attach separate sheet if necessary)
See attached officers/directors rider

8. If the corporation commenced doing business in Tennessee prior to the approval of this application, the date of commencement (month, day and year) _____

9. The corporation is a corporation for profit

10. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is _____ (date), _____ (time)

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

[NOTE: This application must be accompanied by a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.]

October 20, 2004

Signature Date

Vice President

Signer's Capacity

Business Productivity Solutions, Inc.

Name of Corporation

Signature

Michael A Donahue

Name (typed or printed)

OFFICERS/DIRECTORS RIDER

TN-Application for Certificate of Authority

Business Productivity Solutions, Inc

List of Officers

Name: Richard A. Smith **Title:** President
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: J. Jeffery Oxley **Title:** Secretary
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Michael A. Donahue **Title:** VP & Treasurer
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Clifford D. Williams **Title:** Chief Executive Officer
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Geoffrey M. Boyd **Title:** Chief Financial Officer
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Dennis D. Ahlers **Title:** Asst. Secretary
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

List of Directors

Name: Clifford D. Williams **Term:** Oct 07, 2005
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Richard A. Smith **Term:** Oct 07, 2005
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

Name: Geoffrey M. Boyd **Term:** Oct 07, 2005
Bus. Addr.: 730 Second Avenue South, Minneapolis, MN 55402

State of Minnesota

SECRETARY OF STATE

Certificate of Good Standing

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: The corporation listed below is a corporation formed under the laws of Minnesota; that the corporation was formed by the filing of Articles of Incorporation with the Office of the Secretary of State on the date listed below; that the corporation is governed by the chapter of Minnesota Statutes listed below; and that this corporation is authorized to do business as a corporation at the time this certificate is issued.

Name: Business Productivity Solutions, Inc.

Date Formed: 10/07/2004

Chapter Governed By: 302A

This certificate has been issued on 10/25/04.



Mary Kiffmeyer
Secretary of State

EXHIBIT 3

Purchase Agreement

[REDACTED – PLEASE SEE MOTION FOR LEAVE TO FILE CONFIDENTIAL MATERIALS UNDER SEAL FILED WITH AUGUST 11, 2005 JOINT APPLICATION]